

1 legal principles.

2 2. GOOD CAUSE STATEMENT

3 This action is likely to involve commercial, financial, technical and/or
4 proprietary information, along with compensation information of individuals, for which
5 special protection from public disclosure and from use for any purpose other than
6 prosecution of this action is warranted. Such confidential and proprietary materials and
7 information consist of, among other things, confidential business or financial
8 information, information regarding confidential business practices, or other
9 confidential research, development, or commercial information (including information
10 implicating privacy rights of third parties), confidential compensation information, and
11 other information otherwise generally unavailable to the public, or which may be
12 privileged or otherwise protected from disclosure under state or federal statutes, court
13 rules, case decisions, or common law. Accordingly, to expedite the flow of information,
14 to facilitate the prompt resolution of disputes over confidentiality of discovery
15 materials, to adequately protect information the parties are entitled to keep confidential,
16 to ensure that the parties are permitted reasonable necessary uses of such material in
17 preparation for and in the conduct of trial, to address their handling at the end of the
18 litigation, and serve the ends of justice, a protective order for such information is
19 justified in this matter. It is the intent of the parties that information will not be
20 designated as confidential for tactical reasons and that nothing be so designated without
21 a good faith belief that it has been maintained in a confidential, non-public manner,
22 and there is good cause why it should not be part of the public record of this case.

23 3. ACKNOWLEDGEMENT OF UNDER SEAL FILING PROCEDURE

24 The parties further acknowledge, as set forth in Section 14.3, below, that this
25 Stipulated Protective Order does not entitle them to file confidential information under
26 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
27 standards that will be applied when a party seeks permission from the court to file
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1 material under seal. There is a strong presumption that the public has a right of access to
2 judicial proceedings and records in civil cases. In connection with non-dispositive
3 motions, good cause must be shown to support a filing under seal. See Kamakana v. City
4 and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors
5 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics, Inc.,
6 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
7 cause showing), and a specific showing of good cause or compelling reasons with proper
8 evidentiary support and legal justification, must be made with respect to Protected
9 Material that a party seeks to file under seal. The parties' mere designation of Disclosure
10 or Discovery Material as CONFIDENTIAL does not— without the submission of
11 competent evidence by declaration, establishing that the material sought to be filed under
12 seal qualifies as confidential, privileged, or otherwise protectable—constitute good
13 cause.

14 Further, if a party requests sealing related to a dispositive motion or trial, then
15 compelling reasons, not only good cause, for the sealing must be shown, and the relief
16 sought shall be narrowly tailored to serve the specific interest to be protected. See Pintos
17 v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type
18 of information, document, or thing sought to be filed or introduced under seal, the party
19 seeking protection must articulate compelling reasons, supported by specific facts and
20 legal justification, for the requested sealing order. Again, competent evidence
21 supporting the application to file documents under seal must be provided by
22 declaration.

23 Any document that is not confidential, privileged, or otherwise protectable in its
24 entirety will not be filed under seal if the confidential portions can be redacted. If
25 documents can be redacted, then a redacted version for public viewing, omitting only the
26 confidential, privileged, or otherwise protectable portions of the document, shall be filed.
27 Any application that seeks to file documents under seal in their entirety should include

1 an explanation of why redaction is not feasible.

2 4. DEFINITIONS

3 4.1 Action: Case No. 5:24-CV-00949 – this pending federal lawsuit,
4 Hugo Ramirez v. Ameresco, Inc. et. al.

5 4.2 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 4.3 “CONFIDENTIAL” Information or Items: information
8 (regardless of how it is generated, stored or maintained) or tangible things that qualify
9 for protection under Federal Rule of Civil Procedure 26(c), and as specified above in
10 the Good Cause Statement.

11 4.4 Counsel: Outside Counsel of Record and House Counsel (as well
12 as their support staff).

13 4.5 Designating Party: a Party or Non-Party that designates
14 information or items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 4.6 Disclosure or Discovery Material: all items or information,
17 regardless of the medium or manner in which it is generated, stored, or maintained
18 (including, among other things, testimony, transcripts, and tangible things), that are
19 produced or generated in disclosures or responses in discovery.

20 4.7 Expert: a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this Action.

23 4.8 House Counsel: attorneys who are employees of a party to this
24 Action. House Counsel does not include Outside Counsel of Record or any other
25 outside counsel.

26 4.9 Non-Party: any natural person, partnership, corporation,
27 association or other legal entity not named as a Party to this action.

1 4.10 Outside Counsel of Record: attorneys who are not employees of a party to
2 this Action but are retained to represent a party to this Action and have appeared in
3 this Action on behalf of that party or are affiliated with a law firm that has appeared
4 on behalf of that party, and includes support staff.

5 4.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 4.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 4.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as "CONFIDENTIAL."

16 4.15 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 5. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected
20 Material (as defined above), but also (1) any information copied or extracted from
21 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
22 Material; and (3) any testimony, conversations, or presentations by Parties or their
23 Counsel that might reveal Protected Material.

24 Any use of Protected Material at trial shall be governed by the orders of the
25 trial judge and other applicable authorities. This Order does not govern the use of
26 Protected Material at trial.

27 6. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

7. DESIGNATING PROTECTED MATERIAL

7.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

7.2 Manner and Timing of Designations. Except as otherwise provided

1 in this Order, or as otherwise stipulated or ordered, Disclosure of Discovery
2 Material that qualifies for protection under this Order must be clearly so
3 designated before the material is disclosed or produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
9 contains protected material. If only a portion of the material on a page qualifies for
10 protection, the Producing Party also must clearly identify the protected portion(s)
11 (e.g., by making appropriate markings in the margins). A Party or Non-Party that
12 makes original documents available for inspection need not designate them for
13 protection until after the inspecting Party has indicated which documents it would like
14 copied and produced. During the inspection and before the designation, all of the
15 material made available for inspection shall be deemed “CONFIDENTIAL.” After
16 the inspecting Party has identified the documents it wants copied and produced, the
17 Producing Party must determine which documents, or portions thereof, qualify for
18 protection under this Order. Then, before producing the specified documents, the
19 Producing Party must affix the “CONFIDENTIAL legend” to each page that contains
20 Protected Material. If only a portion of the material on a page qualifies for protection,
21 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
22 appropriate markings in the margins).

23 (b) for testimony given in depositions that the Designating Party
24 identifies the Disclosure or Discovery Material on the record, before the close of the
25 deposition all protected testimony.

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on the
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1 exterior of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants
3 protection, the Producing Party, to the extent practicable, shall identify the protected
4 portion(s).

5 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the Designating Party’s right to secure protection under this Order for such
8 material. Upon timely correction of a designation, the Receiving Party must make
9 reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process under Local Rule 37-1 et seq.

17 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
18 stipulation pursuant to Local Rule 37-2.

19 8.4 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
22 expose the Challenging Party to sanctions. Unless the Designating Party has waived
23 or withdrawn the confidentiality designation, all parties shall continue to afford the
24 material in question the level of protection to which it is entitled under the Producing
25 Party’s designation until the Court rules on the challenge.

26 9. ACCESS TO AND USE OF PROTECTED MATERIAL

27 9.1 Basic Principles. A Receiving Party may use Protected Material that is
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disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the

Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

1 (c) If the Non-Party fails to seek a protective order from this court
2 within 14 days of receiving the notice and accompanying information, the Receiving
3 Party may produce the Non-Party's confidential information responsive to the
4 discovery request. If the Non-Party timely seeks a protective order, the Receiving
5 Party shall not produce any information in its possession or control that is subject to
6 the confidentiality agreement with the Non-Party before a determination by the court.
7 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
8 of seeking protection in this court of its Protected Material.

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
15 or persons to whom unauthorized disclosures were made of all the terms of this
16 Order, and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" attached hereto as Exhibit A.

18 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without prior
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
26 parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the

1 parties may incorporate their agreement in the stipulated protective order submitted to
2 the court.

3 14. MISCELLANEOUS

4 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 14.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 14.3 Filing Protected Material. A Party that seeks to file under seal any Protected
12 Material must comply with Local Civil Rule 79-5. Protected Material may only be
13 filed under seal pursuant to a court order authorizing the sealing of the specific
14 Protected Material. If a Party's request to file Protected Material under seal is denied
15 by the court, then the Receiving Party may file the information in the public record
16 unless otherwise instructed by the court.

17 15. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 6, within 60
19 days of a written request by the Designating Party, each Receiving Party must return
20 all Protected Material to the Producing Party or destroy such material. As used in this
21 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected Material.
23 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
24 a written certification to the Producing Party (and, if not the same person or entity, to the
25 Designating Party) by the 60-day deadline that (1) identifies (by category, where
26 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
27 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
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any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 6 (DURATION).

16. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: September 30, 2024 D. LAW

By: /s/ Jonas Agle
Jonas Agle
Attorney for Plaintiff
Hugo Ramirez

Dated: September 30, 2024 CDF LABOR LAW LLP

By: /s/ Leigh A. White
Leigh A. White
Attorney for Defendant
Ameresco, Inc.

1 Dated: September 30, 2024 FISHER & PHILLIPS LLP

2
3 By: /s/ Peter Lee
4 Peter Lee
5 Attorney for Defendant
Bernard Nickels Inc.

6 **LOCAL RULE 5-4.3.4 SIGNATURE CERTIFICATION**

7 I hereby certify that the content of this document is acceptable to Jonas Agle,
8 counsel of record for Plaintiff Hugo Ramirez, and Peter Lee, counsel of record for
9 Defendant Bernard Nickels. I, counsel of record for Defendant Ameresco, Inc., have
10 obtained authorization to affix their signatures to this document.
11

12 Dated: September 30, 2024 CDF LABOR LAW LLP

13
14 By: /s/ Leigh A. White
15 Leigh A. White
16 Attorney for Defendant
Ameresco, Inc.
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18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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20 DATED: October 10, 2024

21 
22 Sheri Pym
23 United States Magistrate Judge
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EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION
3

4 HUGO RAMIREZ, an individual on
5 behalf of himself and all others similarly
6 situated,

7 Plaintiff,

8 vs.

9 AMERESCO, INC., a Delaware
10 corporation; BERNARD NICKELS
11 INC., a New York corporation; and
12 DOES 1 through 50, inclusive;

13 Defendants.

} Case No. 5:24-CV-00949

} (Removed from San Bernardino
} Superior Court Case No.
} CIVSB2406892)

} **UNDERTAKING AND CONSENT**
} **TO BE BOUND BY PROTECTIVE**
} **ORDER**

} Action Filed: May 23, 2024
}

14 I, the undersigned, do depose on oath and state as follows:

- 15 (1) My current employer is _____, and its
16 business address is _____.
- 17 (2) I have received a copy of the Protective Order in the above-captioned
18 action, and I have carefully read and understand the provisions of the
19 Protective Order. I will comply with all the provisions of the Protective
20 Order. I will hold any Confidential Information so designated in
21 confidence, I will not disclose such information to anyone not qualified
22 under the Protective Order, and I will use such information for the
23 purposes of this action only.
- 24 (3) Promptly upon termination of this action, I will return all Confidential
25 Information to counsel for the party by whom I am employed or retained.
- 26 (4) I hereby submit to the jurisdiction of this Court for the purpose of
27 enforcement of the Protective Order in this action.

1 Signed under the penalties of perjury, this ____ day of September, 2024.

2

3 _____
4 Signature

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6 _____
7 Printed Name

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